

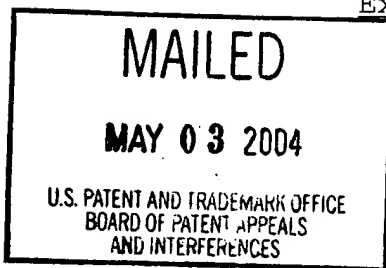
The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALLEN MCCARTY and STEVEN TITUS



Appeal No. 2004-1132
Application No. 09/649,473

ON BRIEF

Before KIMLIN, GARRIS and TIMM, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 5, 6 and 8-13.

Claim 1 is illustrative:

1. A billiard cue comprising:

a shaft having a wall with an outer surface and a tip end and an opposed end, a hollow, void bore extending from the tip end for at least a predetermined distance along the length of the shaft toward the opposed end and terminating in an end located in proximity with the tip end of the shaft, the bore reducing the mass of the tip end to minimize cue ball deflection on impact with the cue.

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In the rejection of the appealed claims, the examiner relies upon the following references:

Ghezzi et al. (Ghezzi)	659,524	Oct. 09, 1900
Seeman et al. (Seeman)	1,505,609	Aug. 19, 1924
Lo	GB 2 199 505	Jul. 13, 1988

Appellants' claimed invention is directed to a billiard cue having a hollow bore extending from its tip end toward the opposed end of the shaft. According to appellants, the

lower mass at the tip end 20 of the shaft 12 and the high stiffness of the shaft material reduces flexure or buckling of the tip end 20 of the cue shaft 12 when the shaft 12 impacts on a ball thereby significantly reducing the deflection of the struck ball from its intended path of movement generally parallel to the stroke axis of the cue shaft 12 (page 3 of brief, first paragraph).

Appealed claims 1 and 11 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Ghezzi.

Claims 1 and 10-13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Seeman.

Claims 13 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Lo.

Also, claims 12 and 13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by or in the alternative under 35 U.S.C. § 103(a) as being unpatentable over Ghezzi.

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Finally, claims 5, 6, 8 and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ghezzi.

Appellants submit at page 4 of the brief that "[c]laims 5 and 8 stand or fall with claim 1" (first paragraph).

We have thoroughly reviewed each of appellants' arguments for patentability. We are in complete agreement with the examiner, however, that the claimed subject matter is unpatentable over the cited prior art. Accordingly, we will sustain the examiner's rejections for the reasons set forth in the answer, which we incorporate herein, and we add the following for emphasis only.

Concerning the § 102 rejection of claim 1 over Ghezzi, appellants contend that Ghezzi's metal spring in the bore does not meet the requirement of a hollow void bore. However, we agree with the examiner that there appears to be no meaningful distinction between the tip fastening means 14, 15 of Ghezzi and appellants' element 16 which projects into the void space. Furthermore, we do not find that the claimed "hollow, void bore" precludes the presence of material in the void of the bore.

Regarding the § 103 rejection of claim 1 over Seeman, appellants offer as a point of distinction that "Seeman discloses a billiard cue shaft which is essentially hollow from one end to the other" (page 4 of the brief, penultimate paragraph). As cogently pointed out by the examiner, appellants' statement is a concession that Seeman's cue is hollow from its tip end. As depicted in Figure 2 of Seeman, the hollow bore terminates at a location in proximity with the tip end of the shaft as required by claim 1. As explained by the examiner, "[w]hat other portions of Seeman's cue are hollow is irrelevant" (page 4 of answer, third paragraph). As for the claim 11 recitation of "the bore extending from the tip end only through the tip portion of the shaft", we agree with the examiner that the bore emanating from the tip end of Seeman's shaft extends only through the tip portion of the shaft, at least to the extent broadly claimed. We concur with the examiner that whereas the "tip" is a definable point on the cue, "the tip end refers to an area closer to the tip than the butt" (page 4 of answer, last sentence). Also, the claim 10 limitation places no upper limit on the extension of bore from the tip end.

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Turning to the examiner's § 102/103 rejection over Ghezzi, we agree with the examiner that there is a reasonable basis for concluding that there is no patentable distinction between the fastening portion of the tip depicted in appellants' Figure 3 and the fastening spring of Ghezzi. We also find that the examiner has provided a rational basis for concluding that elements 14 and 15 of Ghezzi appear to have a weight that is not heavier than the material forming the shaft surrounding the bore, as recited in claim 13.

As for the § 103 rejection of claim 13 over Lo, we agree with the examiner that there is no meaningful distinction between the solid front connector of Lo and the fastening means of appellants located in the bore.

As a final point, regarding the § 103 rejections, appellants base no arguments upon objective evidence of nonobviousness, such as unexpected results.

In conclusion, based on the foregoing, and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

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No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED



EDWARD C. KIMLIN)
Administrative Patent Judge)



BRADLEY R. GARRIS)
Administrative Patent Judge)

BOARD OF PATENT
APPEALS AND
INTERFERENCES



CATHERINE TIMM)
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